

otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors of Committee Members Pursuant to Section 212 of the Act

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the Act (12 U.S.C. 1790a) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in “troubled condition,” as defined in § 701.14 of this chapter. Subpart A of this part shall not apply to any proceeding under this subpart.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 60 FR 31911, June 19, 1995]

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the Act (12 U.S.C. 1790a) and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such no-

tice is submitted indicates that it would not be in the best interest of the members of the credit union or the public to permit the individual to be employed by or associated with, such credit union.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 60 FR 31911, June 19, 1995]

§ 747.903 Procedures where notice of disapproval issued; reconsideration.

(a) The notice of disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The notice of disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.902;

(2) Inform the individual and the credit union that, within 15 days of receipt of the notice of disapproval, they can request reconsideration by the Regional Director of the initial determination, or can appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be considered in the reconsideration.

(b) The request for reconsideration by the Regional Director must be filed at the appropriate Regional Office.

(c) The Regional Director shall act on a request for reconsideration within 30 days of its receipt.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.904 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the NCUA Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why the NCUA Board should review the disapproval; and

(2) Relevant, substantive and material facts that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the Act (12 U.S.C. 1790a) and § 701.14 of this chapter.

(c) *Procedures for review of request.* Within 30 days of the NCUA Board’s receipt of an appeal, the NCUA Board

may request in writing that the petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the NCUA Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the notice of disapproval where the decision is favorable to the petitioner.

(2) The determination by the NCUA Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designee that is adverse to the petitioner, and shall constitute a final order of the NCUA Board.

(3) Failure by the NCUA Board to issue a determination on the petitioner's appeal within the 90-day period prescribed under paragraph (d)(1) of this section shall be deemed a denial of the appeal for purpose of § 747.905.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 60 FR 31911, June 19, 1995]

§ 747.905 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision on a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and shall be binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the United States District Court for the

district where the requester resides, for the district where the credit union's principal place of business is located, or for the District of Columbia.

[56 FR 37767, Aug. 8, 1991; 57 FR 524, Jan. 7, 1992]

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996 (Public Law 104-134, 110 Stat. 1321-358 (28 U.S.C. 2461 note)).

(a) A first tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(A), for a violation occurring after October 23, 1996, shall not exceed \$5,500 per day for each day the violation continues.

(b) A second tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(B), for a violation, practice or breach occurring after October 23, 1996, shall not exceed \$27,500 per day for each day the violation, practice or breach continues.

(c) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon any person other than an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed \$1,100,000 per day for each day the violation, practice or breach continues.

(d) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed the lesser of—

(1) \$1,100,000 per day for each day the violation, practice or breach continues; or

(2) 1 percent of the total assets of such credit union for each day the violation, practice or breach continues.

[61 FR 57291, Nov. 6, 1996]

PART 748—SUSPICIOUS ACTIVITY REPORT; REPORT OF CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

Sec.
748.0 Security program.